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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRYL S. GENTRY,

Defendant and Appellant.

B284586

Los Angeles County
Super. Ct. Nos. 6PR06030,
7PR03000

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Donald S. Kennedy, Commissioner.
Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

Darryl S. Gentry appeals from a postjudgment order executing a 90-day suspended sentence in the county jail, to be served consecutively to a 180-day county jail sentence for violating the terms of his postrelease community supervision (PRCS) in a subsequent violation proceeding. Gentry contends he completed 90 days of residential drug treatment and, accordingly, the execution of the suspended sentence was error. We affirm.

BACKGROUND

The record we have on appeal is sparse. It appears Gentry was convicted of a violation of Vehicle Code section 10851, subdivision (a) in 2013 and sentenced to three years in the state prison, apparently to be served in a split sentence in the county jail under Penal Code section 1170, subdivision (h).¹ Gentry was released from custody in March 2015; five petitions to revoke his supervision followed between April 2015 and November 2016.

Gentry appeared before the court (Commissioner Cynthia Zuzga) in the fifth of these proceedings (No. 6PR06030) on December 12, 2016. Gentry was accused of failing to report to his probation officer for PRCS. Gentry also had been cited for violating the public nuisance statute (§ 372) by “loitering” with five other people in front of a liquor store.

The prosecutor wanted Gentry to serve 180 days in the county jail, but Gentry wanted to participate in a residential drug treatment program. Gentry’s counsel asked “if the court would consider a sentence where 90 days are suspended and a conditional release to probation for linkage to treatment would be allowed.” The court then stated, “Supervised person may be released from confinement in the county jail to an authorized representative of the probation department for transportation to

¹ Further statutory references are to the Penal Code.

an approved residential drug treatment program.” The court continued, “I must advise you that if you don’t follow through in the drug treatment program the 90 days will be imposed and the district attorney or the probation department can file another petition and then you will be facing 270 [days]. . . . So at the treatment program obey all program rules. Do not leave the treatment program without permission of the treatment staff and probation.” The court asked, “Mr. Gentry, do you understand your instructions?” Gentry answered, “Yes, Your Honor.”

In June 2017 Gentry was arrested again on a violation. In the new revocation proceeding (7PR03000), Gentry was accused of failing to report for supervision, failing to “cooperate,” and failing to “follow instructions.” The court (Commissioner Donald S. Kennedy) conducted a hearing on August 1, 2017 in both 6PR06030 and 7PR03000. A probation officer testified that Gentry left his housing on May 2, 2017, was instructed to report on May 8 for a new housing assignment², and did not report.

The court found Gentry in violation and imposed both the 90 days in 6PR06030, execution of which had been suspended, and another 180 days for the violation in 7PR03000, to be served consecutively (270 days total). Gentry’s counsel—a different public defender from the one who had represented him at the December 2016 hearing—told the court, “As far as the internal obligation that he was required to do [apparently referring to the residential drug treatment program], I know there was a subsequent violation that has been proved here, [but] he felt that he had fairly well complied with what the court had asked him to

² The officer testified that Gentry was instructed to report on May 8 but failed to report on May 18. This appears to be a mistatement by the prosecutor in his questioning of the witness: the correct date apparently was May 8, not May 18.

do for the suspended time. He's asking that time run concurrent or remain suspended."

The court responded, "I don't understand how Commissioner Zuzga filled out the form [apparently referring to a form order revoking Gentry's supervision and issuing a warrant], but it does indicate a failure to report to the supervising agency, and that was what the issue was here. So the court does feel that the 90 days is appropriate and that would be consecutive."

Gentry then addressed the court. Gentry told Commissioner Kennedy that he graduated from his residential drug treatment program in 60 days and then went to Royal Palms for a sober living program as directed. Gentry said Royal Palms required him to stay for only 30 days but he stayed there longer. So, Gentry asserted, he had completed 90 days of residential drug treatment program as ordered. Gentry conceded he had "no excuse" for not reporting on May 8 after he left his housing, and he said he accepted the 180 days. But, Gentry argued, he should not have to serve the suspended 90 days because he had "graduat[ed] from the program and [done] all [he had] promised and sworn to do for the court."

Commissioner Kennedy responded, "I don't have in that file any type of notation that says, in essence, [we'll] suspend 90 days as long as you do this—complete the program." The court gave an example of a case it had handled the day before in which the court suspended custody time on the condition the defendant do community labor. The court continued, "So if that person were to come in with a violation for failure to report, I would not give them the additional time that was suspended because it was suspended on the condition that he complete [community labor] and as long as he completes [community labor], then that extension [*sic*] goes away."

The court listened to Gentry but reminded him, “All you had to do was report and you wouldn’t be here.”

DISCUSSION

“An order revoking probation is reviewed under the abuse of discretion standard. [Citations.] The trial court’s factual findings are reviewed for substantial evidence. [Citation.] The same standards should apply to an order revoking PRCS.” (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 381 (*Gonzalez*).)

Under Penal Code section 3453, subdivision (e)—part of the Postrelease Community Supervision Act of 2011, Penal Code section 3450 et seq.—“a person subject to PRCS . . . has an obligation . . . to report ‘as directed’ by the supervising county agency.” (*Gonzalez, supra*, 7 Cal.App.5th at pp. 374-375.) Gentry admitted at the August 1, 2017 violation hearing that he did not report on May 8 as directed. Nevertheless, Gentry contends the 90 days in 6PR06030 should not have been executed because, he says, he completed the 90-day residential drug treatment program as ordered.

Neither the reporter’s transcript of the December 2016 violation hearing nor the minute order of that proceeding makes clear whether Commissioner Zuzga made completion of the program the only requirement for the 90 days to remain suspended. The court never stated its intent in those terms. As Commissioner Kennedy noted, when Commissioner Zuzga signed a minute order in June 2017 revoking Gentry’s PRCS and issuing a no-bail warrant, she checked the boxes both for failure to “[c]ooperate with . . . substance abuse treatment” and failure to report. As the *Gonzalez* court noted, “‘report[ing] to the supervising county agency as directed by that agency’ (Pen. Code, § 3453, subd. (e))” is one of the “mandatory conditions of PRCS.” (*Gonzalez, supra*, 7 Cal.App.5th at p. 379.)

Finally, in any event, Gentry never presented proof to the court that he in fact had completed 90 days of residential treatment. We find no abuse of discretion.

DISPOSITION

The order executing the suspended 90 days in the county jail for Darryl S. Gentry's violation of the conditions of his postrelease community supervision is affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.